From:	LERS, EOIR (EOIR)
To:	All of CLAD (EOIR); All of Judges (EOIR); All of OCIJ JLC (EOIR); Allen, Patricia M. (EOIR); Anderson, Jill (EOIR); Baptista, Christina (EOIR); Barry, Robert (EOIR); Bauder, Melissa (EOIR); Berkeley, Nathan (EOIR); BIA ATTORNEYS (EOIR); BIA BOARD MEMBERS (EOIR); BIA TEAM JLC; BIA TEAM P (EOIR); Brazill, Caitlin (EOIR); Burgie, Brea (EOIR); Burgus, Elizabeth (EOIR); Calvert, Irvina (EOIR); Cardenas, Lupe (EOIR); Carr, Donna (EOIR); Cicchini, Daniel (EOIR); Cowles, Jon (EOIR); Crossley, Maurice (EOIR); Cudo, Relanie (EOIR); Curry, Michelle (EOIR); D"Angelo, Matthew (EOIR); Evans, Brianna (EOIR); Friedman, Paul (EOIR); Gonzalez, Robert (EOIR); Grodin, Edward (EOIR); Hammond, Nicole (EOIR); Hartman, Alexander (EOIR); Hess, Chris (EOIR); Kaplan, Matthew (EOIR); King, Jean (EOIR); Korniluk, Artur (EOIR); Lang, Steven (EOIR); LERS, EOIR (EOIR); Lovejoy, Erin (EOIR); Martinez, Casey L. (EOIR); Mitchell, Carla (EOIR); Morteo, Cristina (EOIR); Noferi, Mark (EOIR); Nunez, Steven (EOIR); O"Hara, Shelley M. (EOIR); Park, Jeannie (EOIR); Podgorski, Monika (EOIR); Powell, Karen B. (EOIR); Ramirez, Sergio (EOIR); Rimmer, Phillip (EOIR); Robbins, Laura (EOIR); Rodrigues, Paul A. (EOIR); Rodriguez, Bernardo (EOIR); Rothwarf, Marta (EOIR); Sanders, John W. (EOIR); Santoro, Christopher A (EOIR); Schaaf, Joseph R. (EOIR); Smith, Terry (EOIR); Stutman, Robin M. (EOIR); Swanwick, Daniel (EOIR); Taufa, Elizabeth (EOIR); Vayo, Elizabeth (EOIR)
Cc:	McHenry, James (EOIR); Reilly, Katherine (EOIR); Sheehey, Kate (EOIR); Moutinho, Deborah (EOIR); Alder Reid, Lauren (EOIR); Adams, Amanda (EOIR); Pease, Jeffrey (EOIR); Macri, Andrea (EOIR); Morgan, Kenosha (EOIR); EOIR Library (EOIR)
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Office of Policy | Legal Education and Research Services Division

Policy & Case Law Bulletin
November 23, 2018

Federal Agencies

DOJ

The Board Issues Decision in Matter of Song — EOIR

27 I&N Dec. 488 (BIA 2018)

An applicant for adjustment of status who was admitted on a K-1 visa, fulfilled the terms of the visa by marrying the petitioner, and was later divorced must submit an affidavit of support from the petitioner to establish that he or she is not inadmissible as a public charge under section 212(a)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(4) (2012).

EOIR Director Issues PM 19-05 on Adjudication of Asylum Cases Consistent with INA § 208(d)(5)(A)(iii) — EOIR

The policy memorandum issued on November 19, 2018, "establishes the policy of EOIR—consistent with INA § 208(d)(5)(A)(iii)—to complete adjudications of asylum applications within 180 days to the maximum extent practicable."

USA SDNY Announces Queens Immigration Attorney Found Guilty Of Operating Asylum Fraud Scheme

On November 19, 2018, the U.S. Attorney for the Southern District of New York announced that Andreea Dumitru, "an immigration attorney based in Queens, New York, was found guilty . . . of asylum fraud, making false statements to immigration authorities, and aggravated identity theft

following a two-week trial." "Between March 27, 2013, and 2017, Dumitru operated a scheme to submit fraudulent I-589 Forms in connection with applications for asylum. Specifically, Dumitru submitted over 100 applications in which she knowingly made false statements and representations about, among other things, the applicants' personal narratives of alleged persecution, criminal histories, and travel histories. Dumitru deliberately fabricated detailed personal stories of purported mistreatment of her clients, forged her clients' signatures, and falsely notarized affidavits."

Virtual Law Library Weekly Update — EOIR
This update includes resources recently added to EOIR's internal or external Virtual Law Library, such as Federal Register Notices, country conditions information, and links to recently-updated immigration law publications.

DHS

USCIS Offers Immigration Services For Those Affected by Super Typhoon Yutu in the CNMI
On November 21, 2018, USCIS announced that it "offers immigration services that may help people affected by unforeseen circumstances, including the Super Typhoon Yutu in the Commonwealth of the Northern Mariana Islands (CNMI). The following services may be available on a discretionary basis, only upon request. These services may include changing a nonimmigrant status or extending a nonimmigrant stay for an individual currently in the United States; expedited processing of advance parole requests; expedited adjudication of requests for off-campus employment authorization for F-1 students experiencing severe economic hardship; expedited adjudication of employment authorization applications, where appropriate; and rescheduling interviews or biometrics appointments with USCIS."

DHS Publishes Unified Agenda of Federal Regulatory and Deregulatory Actions
On November 16, 2018, DHS published its semiannual regulatory agenda, which provides a summary of existing and projected regulations as well as actions completed since the publication of the last regulatory agenda on June 11, 2018.

Supreme Court

CERT. DENIED

Uribe-Sanchez v. Whitaker
No. 18-363, 2018 U.S. LEXIS 6901 (Nov. 19, 2018)
Question Presented: Whether the Fifth Circuit Court of Appeals erred in holding that the Board correctly concluded that it lacked the power to reopen Petitioner's deportation proceedings sua sponte in light of the departure bar regulations under 8 C.F.R. §§ 1003.2(d) and 1003.23(b)(1); effectively creating a circuit split between the Fifth Circuit, and the Second, Sixth and Seventh Circuit Courts of Appeals, all of which have found that the Board's usage of the regulatory departure bar regulations to deny motions to reopen are an impermissible contraction of the Board's congressionally delegated authority to adjudicate such motions in light of this High Court's reasoning

in Union Pac. R. Co. v. Bhd. of Locomotive Engineers, 558 U.S. 67 (2009).

Ramirez-Barajas v. Whitaker
No. 18-78, 2018 U.S. LEXIS 6807 (Nov. 19, 2018)
Question Presented: Where a state statute criminalizes only the causation or threat of bodily harm, without a distinct element requiring the use or threatened use of physical force, does that offense qualify as a crime of violence within the meaning of § 16(a) as the Seventh, Eighth, and Ninth Circuits have held, or does § 16(a) apply only if the statute also requires the use, attempted use, or threatened use of physical force as the First, Second, and Fifth Circuits have held?

First Circuit

Pineda v. Whitaker
No. 18-1162, 2018 WL 6040147 (1st Cir. Nov. 19, 2018) (Motion to Reopen)
The First Circuit denied the PFR, concluding that the Board did not abuse its discretion in denying Pineda's motion to reopen as untimely, despite his arguments for equitable tolling based on ineffective assistance of counsel. Specifically, the court determined that Pineda did not establish that he exercised due diligence during the 4.5 years that elapsed between the Board's affirmance of the IJ's removal order and the date on which Pineda moved to reopen the removal proceedings, especially when the Board had informed him in its 2012 decision of the prerequisites for an ineffective assistance of counsel claim.

Ninth Circuit

Rodriguez v. Marin
No. 13-56706, 2018 U.S. App. LEXIS 32650 (9th Cir. Nov. 19, 2018) (Bond)
On remand from the U.S. Supreme Court's decision in Jennings v. Rodriguez, 138 S. Ct. 830 (2018), the Ninth Circuit expressly determined that it possesses jurisdiction over the habeas claim, declined to "vacate the permanent injunction pending the consideration of . . . vital constitutional issues," and remanded to the district court with instructions to "to consider and determine: (1) whether the class certified by the district court should remain certified for consideration of the constitutional issue and available class remedies; (2) whether classwide injunctive relief is available under 8 U.S.C. § 1252(f)(1); (3) whether a Rule 23(b)(2) class action (a) remains the appropriate vehicle in light of Walmart Stores, Inc. v. Duke, 564 U.S. 338 (2011), and (b) whether such a class action is appropriate for resolving Petitioners' due process claims; (4) whether composition of the previously identified subclasses should be reconsidered; (5) the minimum requirements of due process to be accorded to all claimants that will ensure a meaningful time and manner of opportunity to be heard; and (6) a reassessment and reconsideration of both the clear and convincing evidence standard and the six-month bond hearing requirement."

East Bay Sanctuary Covenant v. Trump

No. 18-cv-06810-JST, 2018 WL 6053140 (N.D. Cal. Nov. 19, 2018) (Asylum; Injunctive Relief)
The district court entered a temporary restraining order (TRO) precluding officials "from taking any action continuing to implement" the DOJ & DHS joint interim final rule entitled "Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims," 83 Fed. Reg. 55,934 (Nov. 9, 2018) (to be codified at 8 C.F.R. pts. 208, 1003, 1208), and ordered the government "to return to the pre-Rule practices for processing asylum applications." The court also ordered the government to show cause on December 19, 2018, why a preliminary injunction (PI) should not be entered.

Eleventh Circuit

United States v. St. Hubert
No. 16-10874, 2018 WL 5993528 (11th Cir. Nov. 15, 2018) (Crime of Violence)
The Eleventh Circuit affirmed St. Hubert's convictions and sentences on two separate counts, concluding that his predicate offenses of Hobbs Act robbery and attempted Hobbs Act robbery in violation of 18 U.S.C. § 1951(b), using and carrying a firearm during a crime of violence in violation of 18 U.S.C. § 924(c)(1)(A), categorically qualify as crimes of violence under the use-of-force clause, pursuant to 18 U.S.C. § 924(c)(3)(A) (analogous to 18 U.S.C. § 16(a)). Applying the categorical approach, the court concluded that "each of the means of committing Hobbs Act robbery–'actual or threatened force, or violence, of fear of injury'–must qualify under the use-of-force clause in § 924(c)(3)(A)." The court also concluded that "given § 924(c)'s 'statutory specification that an element of attempted force operates the same as an element of completed force, and the rule that conviction of attempt requires proof of intent to commit all elements of the completed crime,' attempted Hobbs Act robbery qualifies as a crime of violence under § 924(c)(3)(A) as well."